

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TODD DANNHAUSER, and
TD CO., L.P.,

Plaintiffs,

v.

TSG REPORTING, INC.,
Defendant.

TSG REPORTING, INC.,

Counterclaim-Plaintiff,

v.

TODD DANNHAUSER and
TD CO., L.P.,

Counterclaim-Defendants.

16-CV-747(CM)

**AFFIDAVIT OF
JESENIA RUIZ DE LA TORRE IN
SUPPORT OF TSG'S MOTION
FOR AN ORDER OF PRECLUSION
AND OTHER RELIEF PURSUANT
TO FED. R. CIV. P. 37**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

JESENIA RUIZ DE LA TORRE, being duly sworn, deposes and says:

1. I am an attorney at Zukerman Gore Brandeis & Crossman, LLP, counsel for Defendant TSG Reporting, Inc. ("TSG") in this action.

2. I am fully familiar with the documents referenced in this Affidavit in Support of TSG's Motion for an Order of Preclusion and Other Relief Pursuant to Federal Rule of Civil

Procedure 37, and the matters discussed herein.

3. Attached as Exhibit 1 is a true and correct copy of the Amended Complaint filed on April 15, 2016.

4. Attached as Exhibit 2 is a true and correct copy of the Marketing Agreement, entered into between TSG and TD Co., L.P. (“TDCo”) on or about January 13, 2005, and the amendments thereto dated February 12, 2012 and September 1, 2014. (This document has been designated as confidential and has been filed under seal pursuant to the Court’s August 1, 2016 Confidentiality Stipulation and Order (the “Confidentiality Order”).)

5. Attached as Exhibit 3 is a true and correct copy of the Noncompetition Agreement entered into between TSG and Plaintiff Todd Dannhauser (“Dannhauser”), dated as of November 15, 2010. (This document has been designated as confidential and has been filed under seal pursuant to the Court’s Confidentiality Order.)

6. Attached as Exhibit 4 is a true and correct copy of an example of the bi-monthly commission reports that TSG provides to Plaintiffs pursuant to the Marketing Agreement. (This document has been designated as confidential and has been filed under seal pursuant to the Court’s Confidentiality Order.)

7. Attached as Exhibit 5 is a true and correct copy of portions of the transcript of the deposition of Todd Dannhauser (in his personal and corporate capacity), dated October 19, 2016. (This transcript has been designated as confidential and has been filed under seal pursuant to the Court’s Confidentiality Order.)

8. Attached as Exhibit 6 is a true and correct copy of an excerpt of Plaintiffs’ Initial Disclosures, dated May 6, 2016.

9. Attached as Exhibit 7 is a true and correct copy of an excerpt of Plaintiffs' Supplemental Responses to Defendant's First Set of Interrogatories, dated July 1, 2016. (An email included with Plaintiffs' Supplemental Responses contains confidential information and a portion of Exhibit 7 has been filed under seal pursuant to the Court's Confidentiality Order.)

10. Attached as Exhibit 8 is a true and correct copy of an excerpt of Plaintiffs' Responses to Defendant's First Set of Requests for Production of Documents, dated June 6, 2016.

11. During discovery, TSG requested that Plaintiffs produce documents pertaining to Plaintiffs' commission claims, specifically, "all documents relating to commissions Plaintiffs allege to have been erroneously calculated or unpaid by TSG." Although Plaintiffs agreed to produce the same (*see* Exhibit 8 at No. 1), after personally reviewing Plaintiffs' document production, I did not locate any documents responsive to this request.

12. Attached as Exhibit 9 is a true and correct copy of a cover email and Excel spreadsheet (the "Settlement Spreadsheet") from Plaintiffs' counsel, identified as Exhibit R at the deposition of Todd Dannhauser on October 19, 2016. I have been informed and understand from TSG that, assuming for the sake of argument that all unpaid or underpaid commissions listed in the Settlement Spreadsheet were not properly paid (and TSG does not so concede), the amount due would total only approximately \$11,500. (The Settlement Spreadsheet contains confidential information and has been filed under seal pursuant to the Court's Confidentiality Order.)

13. Attached as Exhibit 10 is a true and correct copy of an excerpt of Plaintiffs' Responses to Defendant's First Set of Interrogatories, dated June 6, 2016.

14. Attached as Exhibit 11 is a true and correct copy of a letter from Plaintiffs' counsel, Preston Postlethwaite, dated July 22, 2016.

15. Attached as Exhibit 12 is a true and correct copy of my letter to Plaintiffs' counsel, dated August 5, 2016, asking Plaintiffs to supplement their discovery responses and disclosures, which they did not do.

16. Attached as Exhibit 13 is a true and correct copy of Mr. Postlethwaite's letter, dated August 9, 2016.

17. Attached as Exhibit 14 is a true and correct copy of the minute entry issued by the Court on November 4, 2016.

18. Attached as Exhibit 15 is a true and correct copy of Mr. Postlethwaite's letter dated November 14, 2016, in response to the Court's November 4th direction. Based upon my review of the websites of the five entities listed in this letter, all of these entities provide court reporting services and compete with TSG. I also confirmed with TSG's CEO that the five entities directly compete with TSG.

19. Attached as Exhibit 16 is a true and correct copy of a printout from TSG's website that describes the services offered by TSG.

20. Attached as Exhibit 17 is a true and correct copy of an email to Mike Rixon, TSG's CEO, dated October 5, 2015, that relates to Plaintiffs' terminations. (This email has been designated confidential and has been filed under seal pursuant to the Court's Confidentiality Order.)

21. During discovery, TSG produced or made available to Plaintiffs all company information relating to commissions, including TSG's database – Plaintiffs' representatives

spent two days in TSG's New York headquarters, logged into the system as the CEO, with full access to TSG's network.



Jesenia Ruiz de la Torre

Sworn to before me this
17th day of November, 2016



NOTARY PUBLIC

DAVID M. FARBMAN
Notary Public, State of New York
No. 02FA4508574
Qualified in Nassau County
Commission Expires Feb. 28, 2018